

Dangerous Offenders – What can be achieved?

I'm greatly honoured by this invitation to speak to you this evening -
- I've now started my 35th year in and around the Probation Service in both England and Wales, including over 5 years working in various prisons, and it's still a shock to me to find myself in venues such as this!

- As an independent Chief Inspector I now regularly produce findings, recommendations and advice, and -

- you the Parliamentarians have to decide whether you think I'm talking sense, and what you think should be done as a consequence of what I have to say on this evening's topic:

“What can be achieved with dangerous offenders?”

Well, do I need to spell out what the problem is? -

The newspapers, radio & TV now regularly do stories about former offenders committing some truly very nasty offences, sometimes following early release from prison.

- In their customary objective, balanced, and fair-minded way, journalists want to know “Who's to blame?” and “Can we see their head on a pike please?”

Since ‘heads on pikes’ are much more likely to be those of politicians rather than public servants it is not surprising that politicians should take a keen interest in this subject.

Our Inspectorate, a body that independently inspects Probation and Youth Offending work in England & Wales, has reported on some of these cases, and we have often been highly critical of the actions, or lack of action, by some of the staff managing these cases -

- but you'll notice that one thing we do NOT say is: “This report will ensure that this tragedy will never happen again.”

It's obvious when you say it, but it needs to be emphasised that of course, anyone who is not locked up is at liberty to commit a dangerous offence –

- so our reports on how an offender was managed in the community can help to make a future tragedy less likely, but they can never stop one from ever happening again.

We are very aware that it's quite easy to be wise after the event, and to exercise 20/20 hindsight; so if we are to be critical of others, we should be clear about what it was *reasonable to expect* of them. – so our question in these cases is:

- What could anyone have reasonably done to make this terrible new crime less likely to happen?

In my capacity as an independent Crown appointment, I'm neither a spokesperson for the Government, nor for or against any opposition party either, and also certainly not for the Probation Service or other public bodies either -

- rather than attacking or defending any position, I aim to try to offer you fair comment, and talk sense, based on our collective knowledge, understanding and experience.

- My role is to do that on behalf of the taxpaying public, and it is in that capacity that in the next few minutes I'll try to offer my advice to you about what it is reasonable to expect people to achieve when working with dangerous offenders-

- and this will include addressing “What are these dangerous people doing out at liberty in the community in any case?”

My theme revolves around a phrase that we have used in each of the case reviews we have written – we've said:

“When an offender is being managed in the community it is simply not possible to eliminate risk altogether, but the public is entitled to expect that the authorities will do their job properly, that is to say, to take all reasonable action to keep to a minimum each offender’s risk of harm to others.”

If you’d like me to make that point in a slightly different way:- Although we are often strongly critical of where people have failed to do something it was reasonably possible for them to do, we won’t criticise them for *failing to achieve the impossible*
- but what do I mean by all that?

To examine this topic in more detail, the first question I cover is “Who do we mean by ‘dangerous offenders’?”

There is a legal definition of what is a ‘Dangerous offender’ under the 2003 CJ Act, which is important to a Court when passing a sentence, but I won’t be using that as the reference-point for explaining what, away from a Court setting and in day-to-day messy reality, it is possible for Probation and Youth Offending practitioners and their partners to achieve. ...

Now: .. In recent years I have been hearing an implicit but clear broad political consensus around the idea that we should take a twin-track approach to sentencing:

“We’ll keep the dangerous offenders locked up, to protect the public, but not clog up our prisons with the other offenders, the ones who don’t need to be there.”

This sounds reasonable doesn’t it? – If we just locked up the dangerous ones until they’re safe we wouldn’t have this problem in the first place -

- All we need the authorities to do is - by careful assessment - is spot all the dangerous offenders, in the red hats so to speak, and put them over there – and keep them locked up

- & have the others, in green hats so to speak, over there – and we can treat them more creatively ... but ...

- as soon as I say that, you know that: it isn’t like that, is it?–

- In reality each and every offender is individual and different, and there is a whole spectrum of dangerousness – of shades of brown if you like, between the extreme red at this end and the extreme green at that end.

- In reality, there is, first, an almost infinite variety of degrees and mixes of Risk of Harm to others presented by different offenders, and second, the potential for many of these to do harm to others goes up and down at different times.

And this inconvenient untidiness in the way we try to put people into categories is reiterated when we look at who commits Serious Further Offences – or SFOs

Depending on what you count as an SFO, and how you count them, which keeps changing, there are about 100 of the most serious SFOs – murders and rapes etc - committed every year by people under supervision in the community -

- since there are nearly 200,000 offenders under supervision at any one time, depending again on how you count them, this represents one case in about two thousand -

- a tiny percentage of the total, but of course an appalling tragedy to the victim in each and every single case

Nationally there’s now a line drawn near one end of that spectrum I’ve been describing, so that about 7% of all sentenced offenders are classified as High or Very High Risk of Harm to others.

This 7% of offenders are nearly three times more likely to commit an SFO (as you might expect), so accordingly they commit about 20% of all Serious Further Offences.

But of course that still leaves the other 80% of all SFOs, & logically these are being committed by offenders who have been classified as Medium or Low Risk of Harm to others -

-& I'll emphasise here that in most cases these assessments are accurate – but the fact is that dangerous offences can be committed at any time by any one of a wide range of people

- So although more dangerous offences are going to be committed by people who have done this kind of thing before, many dangerous offences are going to be committed by those record doesn't predict it.

There's a similarity between this work and what insurance companies do:

You can make predictions about percentages of groups of people from within a particular risk group – but it's next to impossible to make a prediction about individuals.

I'll spare you the rest of my analogy comparing risk assessments of offenders with insurance, but I'll complete my answer at this point to that fair starting question:

“Couldn't we just keep locked up the most dangerous offenders? – Wouldn't that keep the public safe?” ...

Well, returning to those 100 or so very serious further offences committed each year by people under current supervision in the community -

- we know that only about 20 out of these 100 were committed by the offenders assessed as being in the group of High or Very High Risk of Harm to others.

So if, for the sake of argument, we could lock up for ever all the High or Very High Risk of Harm offenders, we would:

- a) Have to keep locked up each year some 15,000 more people than we do now, and
- b) By this means prevent about 20 out of the 100 most serious SFOs per year, still leaving the other 80 or so really terrible SFOs unprevented

This draconian locking-up option is in theory an available option, but it is very costly, and of very limited benefit.

... But, whether we were to adopt it or not, we would still have to consider what we can expect to be achieved with the dangerous offenders – indeed with any offenders – who are not locked up, for whatever reason, but who are under supervision in the community. What is achievable with them?

As an Inspectorate we write about 100 reports of various kinds each year (and largely unnoticed), but for reasons we can all understand it is our occasional reports on individual cases, cases where an offender under supervision has committed an extremely distressing crime, that our reports attract public attention.

We do not hold back from criticising severely in the cases where we consider that officials have not done their job properly, such as in the cases of:

- Peter Williams, the Nottingham City Youth Offending Team case in the murder of the jeweller Marion Bates;
- Damien Hanson and Elliot White, who murdered the banker John Monckton
- Anthony Rice, the lifer who murdered Naomi Bryant -
- these all made headlines and raised understandable public concern.

There was also public concern following the Panorama programme on the hostels in Bristol a year ago – and as with the other cases I just mentioned we were highly critical of the management of one particular case there, which we think should have been much better managed.

Yet we also said then that we were not going to criticise people for “failing to achieve the impossible”, and having criticised that one particular case we found that in the other cases in that inquiry staff had achieved the possible, managing the cases to a satisfactory standard – they had achieved the possible -
- so why did we need to labour that point that we were not criticising people for failing to achieve the impossible?

Let’s look at that innocuous phrase I used a moment or two ago, about an offender being “under supervision” ...

At one time ‘Probation’ used to be a period of time during which the offender was to ‘prove’ him or herself, while out in the community, instead of undergoing a sentence...

But over the last thirty or more years the language people used gradually evolved from the offender being “on Probation” to being “under supervision” – because there were other Orders & Licences as well as Probation Orders.

As part of this subtle change, which began in the 1980s or even earlier, before Probation formally became a sentence in its own right, people started saying “I am supervising him, I am monitoring him” – as if the responsibility had somehow moved, from the offender’s responsibility to behave properly - to the officer’s responsibility for the offender’s behaviour ...

In the Probation and Youth Offending world we have got used to the idea of people emphasising the contribution being made to protecting the public by means of “close supervision and monitoring” – starting to sound as if supervision in the community is like prison in the community.

But supervision in the community can’t possibly be prison in the community – you are either locked up or you’re not.

So, has the language we’ve been using led people to expect too much? -

- Rightly, many of us talk of public protection, but does it give the impression that it is more than it is? – or indeed more than it possibly can be?

I thought that the people who made the Panorama programme last year made a fair point when they said that general talk of “close supervision and monitoring of offenders” can give a misleading impression to the general public of what is being done on their behalf.

Having said that, the programme makers went on to capitalise on that misguided expectation by implying that it was scandalous that offenders were not being followed around in person 24 hours a day – hardly a reasonable expectation, as soon as you think about it.

Clearly it is not helpful for anyone to make it sound as if community supervision is like ‘prison in the community’, which it plainly is not - We shouldn’t imply that it is more than it is.

Instead, it may be helpful to confirm that when an offender receives a community sentence, or is released from a custodial sentence, the offender is ‘Not Locked up, but is Subject to Rules’.

People who are not locked up obviously have the means and ability to commit offences in the community, and the officers who supervise offenders are by no means necessarily failing to do their job properly if such offenders take the opportunities available to them to reoffend.

But officers would be failing to do their job properly if they didn't 'enforce the set rules' as they should do, or if they didn't take all reasonable action to keep to a minimum the offender's Risk of Harm to others.

So let me confirm here one more time that Probation supervision cannot achieve the impossible, and it is not a substitute for locking-up -

- It is for when you want to try and achieve something with an offender other than by locking them up.

If, in a particular case, a proper decision has been made that the offender is, at this point, not, or no longer, to be locked up, then you should expect the authorities to do all they can with each case, as appropriate to the individual case, to Punish, Help, Change and Control that individual – as I say, as is appropriate to that individual case.

And that's what the Inspectorate assesses on your behalf. Whether we are carrying out an inspection in a Probation Area or in a Youth Offending Team, or whether we're reviewing an individual case where a terrible further crime has been committed, in essence we're assessing the same thing:

Have the relevant authorities done their job properly?

With each individual case, have the right things been done in the right way with the right person at the right time? -

- has the right *individualised service* been provided?

And, in particular, in terms of public protection, has all reasonable action been taken to keep to a minimum each offender's risk of harm to others?

Thus, in an *individual case review*, we can tell you whether the work was done well enough or not, and in an *inspection* we can tell you *how often* the work was done *well enough*.

Summary:

I've been saying that it is wrong to expect public servants to achieve the impossible, but it is right to expect them to do the possible; do their job properly; do their job well enough.

That's why the advice I offer you now, in the strongest possible terms, is as follows, for those occasions when you hear that an offender has reoffended while 'Not locked up, but Subject to Rules', and perhaps – dare I say - you start to feel a lazy soundbite 'coming on':

It is entirely wrong to start your thoughts or your pronouncements with the assumption that there has been a failure by an official if an offender Subject to Rules has committed a terrible crime – any more than you would immediately say the referee was to blame when a player commits some appalling foul. –

But -

- It is entirely reasonable for you to ask: Have the officials been doing their job properly? Was there anything that they could *reasonably* have done that would have made this *less likely* to have happened?

And if you want advice about what it was reasonable to expect in a particular case, then please ask this Inspectorate – we provide independent authoritative assessment and advice on matters such as this (and we do it cheaply and swiftly too):

We advise you what was achievable in a particular case, or set of cases, and whether that was achieved -

I look forward to hearing more from you.

Andrew Bridges
HM Chief Inspector of Probation
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